IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 19946 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ? - **No.**
2	To be referred to the Reporter or not ? - **No.**
3	Whether their Lordships wish to see the fair copy of the judgment ? - **No.**
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? - **No.**
5	Whether it is to be circulated to the civil judge ? - **No.**

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NEPALSING BODANSING SHEKHAVAT - Petitioner(s)

Versus

POLICE COMMISSIONER VADODARA &2 - Respondent(s)

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Appearance :
MR NB TIWARI for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 16/11/2005

ORAL JUDGMENT

1.Nepalsing Bodansing Shekhavat, petitioner has filed this petition of habeas corpus under Article 226 of the Constitution of India for quashing and setting aside the order of detention dated 6/9/2005

passed by the Police Commissioner, Vadodara City, respondent no.1 herein. Petition has been filed on 26/9/2005. My brother Justice Mr.A.S.Dave has issued rule on 3/10/2005 and the same is returnable. Therefore, the matter has been placed for final hearing today.

2.I have heard Mr.N.B.Tiwari, learned advocate for the petitioner. I have also heard Mr.N.D.Gohil, learned Asst. Public Prosecutor in this behalf.

2.1 Mr.Tiwari, learned advocate states that the detention order has been passed on 6/9/2005 and the grounds of detention has been supplied on 6/9/2005. According to him, the grounds stated in the order is that one FIR has been registered against the petitioner detenue at South Divn. Prohibition Station Vadodara City C.R.No.1424 of 2005 under the Bombay Prohibition Act. It is further alleged that the petitioner is 'bootlegger' involved in selling the liquor, about 7260 bottles of English liquor approximately valued at Rs.26,27,280/-. It is further alleged that along with this, a truck-valued at Rs.5,00,000/-, mobile phone-valued at Rs.2000 and cash of Rs.1,300/-, in all muddamal of Rs.31,30,580/- (thirty one lakh thirty thousand five hundred and eighty) has been recovered from the petitioner. It is alleged that his this activity can not be prevented by taking steps under Section 93. It is further alleged that the activity of the petitioner also cannot be taken under the provisions of Section 57 of the Bombay Police Act. It was stated that petitioner has applied for bail. It is alleged that if the petitioner has been granted bail, he may continue the said activity. Petitioner was in judicial custody at the time of detention under the Act.

2.2 It is the case of the petitioner that aforesaid contentions and allegations are not correct under the Act. No statement of any anonymous witnesses have been recorded by the authority. Section 93 of the Bombay Prohibition Act provides statement of security for good behavior. It was further alleged that it is the material fact that no anonymous witness has expressed his fear before the authority. Therefore, there is no question of disturbing the public order. It was further stated that there is only one single case registered against the petitioner is not habitual offender and he has been branded as 'Bootlegger'. The order of detention has been considered by the detaining authority on irrelevant and extraneous material reflecting non-application of mind which vitiates the order of detention. It was further alleged that sub-section (3) of Section 3 of the Act provides that when an order of detention is passed under this Section by the authorized Officer, the said officer shall forthwith report the fact to the State Government together with the grounds on the order has

been passed and such other particulars as in his opinion have a bearing in the matter. The petitioner submits that the detaining authority has failed to comply with the said mandatory provisions under the circumstances the petitioner's continued detention has become illegal.

2.3 Petitioner has relied upon the case of Piyush Kantilal Mehta vs. Commissioner of Police, reported in AIR 1989 SC 491. It was further submitted that there is no material to show that the members of the public of the concerned localities had to run away from there and to go inside their houses and to close their door. No such situation has been mentioned in this case. Merely registration of a single case under the Prohibition Act by itself cannot be considered as in the realm of breach or disturbances of public order, merely it is a case of breach of law and order situation and therefore, the subjective satisfaction recorded by the detaining authority is vitiated.

3. Mr.N.D.Gohil, learned Asst. Public Prosecutor, has tried to support the order of detention in this behalf. He has relied upon the affidavit filed by Dipak Swaroop, I.P.S., Commissioner of Police, Baroda City, Baroda in this behalf. He has stated that offence has been registered against the petitioner and muddamal of Rs.26,27,280/- has been recovered from the petitioner, hence the petitioner is carrying on bootlegging activities and further submitted that all the evidence on record is sufficient to establish that the petitioner is carrying on bootlegging activities and therefore, the petitioner has been detained under the provisions of Section 2(b) of the PASA Act as 'bootlegger'. It was further stated that petitioner is illegally storing and selling the country liquor and likely to create health hazard in general public and, thus, the public order has been disturbed.

4. I have considered the facts and circumstances of the case and have also considered the judgment in the case of Piyush Kantilal Mehta (supra). I have also considered the judgment and order in the case of Rajubhai Pratapbhai Panpatil vs. Commissioner of Police and others in Special Civil Application No.20420 of 2005, decided on 15/11/2005 by this Court (Coram: K.M.MEHTA, J.) and after going through the same, I am of the view that petition is allowed. The order of detention dated 6/9/2005 is quashed and set aside. The deteune, Nepalsing Bodansing Shekhavat is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly with no order as to cost. Direct service is permitted.

(K.M.MEHTA, J.)

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